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JS 44 (Rev. 12/07) (and rev. 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS Bertina Musumeh	DEFENDANTS United States of America, Docs 1 through 10
(b) County of Residence of First Listed Plaintiff: San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant: (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED
(c) Attorney's (Firm Name, Address, and Telephone Number) Steven J. Brady Esq., S.B.N. 116651 Brady Law Group, an unincorporated law firm 1015 Irwin Street, Suite A, San Rafael, CA 94901 Telephone: (415) 459-7300 Fax: (415) 459-7303	Attorneys (If Known) unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|--|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus — Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Dunks and Tinkling <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS				
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing: Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights				

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Federal Tort Claims Act, 28 U.S.C. § 2674

Brief description of cause:

Wrongful death resulting from negligently maintained premises owned and controlled by the defendant

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE:

June 9, 2008

SIGNATURE OF ATTORNEY OF RECORD

BY FAX

JUN 06 2008 15:18 FROM:

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Attorneys for plaintiff
Bettina Mussumeli

E-filing

FILED
JUN 9 2008
RICHARD W. WIEHING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

BETTINA MUSSUMELI, individually and as
personal representative of the Estate of
John J. Mussumeli, deceased

Plaintiff,

vs.

UNITED STATES OF AMERICA, DOES
ONE THROUGH TEN,

Defendants.

CV 08

2895

CIVIL ACTION NO.

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL
(Negligence - Wrongful Death and
Survival)

BY FAX

FIRST CAUSE OF ACTION: WRONGFUL DEATH

1. This action is brought against the United States of America, based on the negligence of employees of its agencies including the Department of Veteran Affairs, and arises under a United States statute, 28 U.S.C. 2674. This Court has jurisdiction pursuant to 28 U.S.C. § 1346(b)(1).
2. Venue is proper in the Northern District of California because substantially all of the events and omissions surrounding this case occurred in this district, and the improved real property owned and/or possessed by defendant, which property is involved in plaintiff's claim is located in San Francisco, California in this district.
3. Plaintiff Bettina Mussumeli is and was at all times relevant herein a citizen of the

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1 United States of America and the State of California and a resident of the City and
2 County of San Francisco and the daughter, sole heir and personal representative of
3 decedent John J. Mussumeli, who died on July 7, 2006 in the Veterans
4 Administration Medical Center in San Francisco, California.

5 4. Defendant United States of America, through its agency the Department of
6 Veterans Affairs, is the owner and/or possessor of certain improved real property in
7 the City and County of San Francisco, located at 4150 Clement Street, San
8 Francisco, California, and consisting of the Veterans Administration hospital
9 facilities (the "subject premises").

10 5. Defendants Does 1 through 10 are manufacturers, installation and maintenance
11 contractors whose identities are unknown to plaintiff, but whom plaintiff is informed
12 and believes, and thereupon alleges, may have manufactured, installed or
13 conducted maintenance work on the front door of the subject premises.

14 6. Prior to filing this action, plaintiff Bettina Mussumeli filed an administrative claim for
15 damages under 28 U.S.C. § 2672 with the Department of Veterans Affairs on or
16 about December 29, 2006. Negotiations continued on this claim through January 9,
17 2008. On January 9, 2008, the Department of Veterans Affairs sent plaintiff a letter
18 (erroneously dated January 9, 2007) rejecting plaintiff's settlement demand and
19 offering a settlement of \$25,000.00. Plaintiff hereby elects to treat this rejection
20 and counter-offer as a rejection of her claim as of the actual date of that letter.

21 7. On or about June 7, 2006, the subject premises owned and/or possessed by
22 defendant was in a dangerous condition in that the automatic main front door to
23 those premises was defectively and negligently designed, installed and maintained
24 so that it would move suddenly and unexpectedly and with great force, striking
25 individuals who were attempting to enter or exit the premises. Defendant United
26 States of America had a duty to use reasonable care to see that the premises in
27 general, and the automatic door in particular, were reasonably safe for the use of
28

1 the general public and patients of the Veterans Administration hospital. Defendant
2 United States of America knew or should have known that the said automatic door
3 was in a dangerous and defective condition and was unsafe for use by the general
4 public and patients.

5 8. On or about June 7, 2006, plaintiff's decedent John J. Mussumeli entered the
6 subject premises for the purpose of receiving medical care to which he was entitled
7 as a veteran of the armed services. At that time and place the automatic main front
8 door of the subject premises moved suddenly and unexpectedly with great force,
9 knocking him to the ground and breaking his hip.

10 9. On July 7, 2006, plaintiff's decedent John J. Mussumeli died from surgical
11 complications directly and proximately resulting from the injury he received from the
12 door on the subject premises on June 7, 2006.

13 10. As a result of the foregoing, plaintiff Bettina Mussumeli has lost the care, comfort
14 and society of her father, decedent John J. Mussumeli and has been damaged in
15 an amount in excess of \$75,000.00, the exact amount of which damages has not
16 yet been ascertained, but which plaintiff believes to be \$1,000,000.00.

17 WHEREFORE, PLAINTIFF PRAYS JUDGMENT as set forth below.

18
19 **SECOND CAUSE OF ACTION – SURVIVAL**

20 11. Plaintiff realleges and incorporates by reference as though fully set forth herein the
21 allegations of paragraphs 1 through 10 of the First Cause of Action.

22 12. As a further result of the foregoing, plaintiff, as the personal representative of the
23 Estate of John J. Mussumeli, deceased, has incurred expenses for decedent's
24 funeral and burial in the sum of \$7,817.25

25 WHEREFORE, PLAINTIFF PRAYS JUDGMENT as set forth below.

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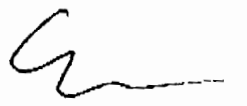
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PRAYER

WHEREFORE, PLAINTIFF PRAYS JUDGMENT AS FOLLOWS:

1. For damages in the amount of \$1,007,817.25 or for such other sum according to proof;
2. For costs of suit, interest and such other and further relief as may be just and proper.

Dated: June 6, 2008


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San Rafael, CA 94901

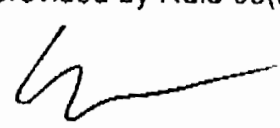
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Attorneys for plaintiff
Bettina Mussumeli

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a), Federal Rules of Civil Procedure.

Dated: June 6, 2008


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